EPA Additional Responses to Comments Provided on the State's October 10, 1997 and December 9, 1997 Draft Water Quality Attainment Strategy and at the January 22, 1998 public hearing held by the North Coast Regional Water Quality Control Board on the December Draft Strategy
Part 2
March 16, 1998

In addition to the comments sent to EPA concerning the EPA draft TMDL dated January 29, 1998, numerous comments were sent to the State (some with copies to EPA) regarding the two drafts of the State Strategy dated October 10, 1997 and December 9, 1997. In addition, the State received comments on its draft Strategy in a public hearing on January 22, 1998.

EPA has reviewed and considered the comments sent to the State regarding its draft Strategy, and also the State's draft responsiveness summaries (dated February 24, 1998). EPA representatives were present at the January 22, 1998 public hearing, and we have reviewed and considered the State's draft summary of comments made at the public hearing and the draft State responsiveness summary to those comments.

Many of the comments regarding the State's draft Strategy are not relevant to the EPA TMDL for various reasons. For example, many comments deal with the implementation plan which is included in the State's Strategy, but which is not a part of the EPA TMDL. Other comments sent to the State deal with aspects of the State Strategy which were not included or were changed in the EPA TMDL, for example, certain numeric targets.

To the extent that comments deal with portions of the draft State Strategy which are similar to portions of the EPA TMDL, we have reviewed and considered the comments and the State's draft responses, and where we deemed additional response is warranted, that is provided below.

<u>Supplemental Response to Comments on the Proposed Garcia River Watershed Water Quality Attainment Strategy dated October 10, 1997.</u>

<u>Comments received on 11/5/97 from U.C. Cooperative Extension</u>

1. Please expand on the reasoning behind the sediment reduction targets.

RESPONSE:

State response to comment number 143 in the draft responsiveness summary:

Section 303(d) of the Clean Water Act requires the development of a Total Maximum Daily load which is designed to meet instream water quality standards. The data submitted by landowners and others for consideration in the development of the Strategy were insufficient to calculate a total maximum daily load of sediment, per se. As such, it was assumed that if all

controllable sources of sediment were indeed controlled, the rate of sediment delivery would approach the natural rate of sediment delivery under which salmonids have historically thrived. The likely success of mitigations in various locations across the landscape is estimated in lieu of the required load estimate. This is a conservative approach required due to the lack of sufficient data to calculate an allowable load of sediment.

EPA adds the following response:

The EPA believes that the information presented by the State was sufficient to develop a TMDL for sediment for the Garcia River. The TMDL was expressed in terms of tons/mi2/year since the EPA believes that expression of loading rates on an annual basis is more appropriate for this given pollutant.

Supplemental Responses to Comments on the Proposed Garcia River Watershed Water Quality Attainments Strategy dated December 9, 1997.

Comments dated January 20, 1998 from Wayne Whitlock, Pillsbury, Madison and Sutro
(Note: These comments have been paraphrased)

2. Current land use activities should not be regulated because the excessive sedimentation in the Garcia is primarily caused by historic practices, not current ones.

RESPONSE: The purpose of the TMDL is to achieve WQS. Even if the impaired condition is largely caused by historic practices, that does not negate the obligation to set the TMDL at a level which will result in attainment of water quality standards. Reducing current sediment loading is necessary to allow the Garcia River to recover. The TMDL establishes a total annual load allocation for sediment of 552 tons per square mile. Available data indicates that current loading is far in excess of that amount and that current loading is still contributing to the impairment.

3. The Clean Water Act's requirement to provide for a MOS does not apply to this TMDL because the statutory language is directed solely at effluent limitations, not discharges from nonpoint sources.

RESPONSE: The Clean Water Act states that a margin of safety "takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." Thus, this is one consideration that the MOS must take into account. The statute does not state that the MOS cannot take other considerations into account. The entire framework of the TMDL requirement is that a TMDL must be strict enough so that water quality standards are met. This suggests that there must be a margin of safety, whether implicit or explicit or both, to ensure that standards are met. Even if the statute did not explicitly require a MOS, EPA would very likely be using that concept in order to ensure that the statutory requirement is met. Moreover, if Congress had meant to limit MOS to TMDLs including point sources, it could and almost certainly would have done so with far greater clarity.

4. Neither 303(d) nor the implementing regulations require TMDLs to be numeric. It is inappropriate to adopt numeric limits when water quality objectives are narrative.

RESPONSE:

State Response to comment 115 in the State's draft responsiveness summary:

EPA guidance on the development of TMDLs requires the development of numeric targets by which to measure the success of allocations at meeting the water quality standards. The numeric targets proposed for the Garcia River watershed are consistent with the narrative objectives in the Basin Plan.

EPA adds the following response:

The regulations at 40 CFR 130.2 includes definitions for "load or loading", "loading capacity", "load allocation", "wasteload allocation" and "TMDL", all of which suggest numeric results. For example the definition of "loading capacity" states that it is "the greatest amount of loading that water can receive without violating water quality standards." The definition for "load allocation" states that it is "the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources." Similarly, the definition for TMDL states that it is "the sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background."

In addition, under EPA's August, 1992 guidance, "Narrative standards and designated uses may be the basis for TMDL development; although such standards will need to be interpreted in a quantitative manner in order to establish a loading capacity and individual load and wasteload allocations."

Establishing numeric targets serves several purposes. In general, they are used to evaluate the relationship between the pollutant -- in this TMDL, sediment -- and its impact of water quality. In this TMDL, the numeric targets are one of the measures used to determine the percent reduction in loading needed to achieve water quality standards. Perhaps most important, the targets can be used to track progress toward the restoration of the designated uses and attainment of water quality standards.

5. An implementation plan is not a necessary element of a TMDL.

RESPONSE:

State response to comment 116 in the State's draft responsiveness summary:

The goal of the Regional Water Board staff is not simply to satisfy the EPA's requirements but to provide a plan for the restoration of beneficial uses of the Garcia River watershed. The implementation plan provides the means of attaining the goals set forth in the TMDL and the Basin Plan.

In addition, the State's response on comment 77 in the State's draft responsiveness summary to comments on the October 10, 1997 draft notes that:

The Porter Cologne Act requires that the State develop an implementation plan and incorporate it into the Basin Plan.

EPA adds the following response from Part 1, response to comment 20:

Implementation of the TMDL, once established, will ensure that the water quality standards will be achieved. With a TMDL addressing waters impaired by nonpoint sources, the decisions regarding implementation are usually within the purview of local and state governments. Under the Clean Water Act at Sec. 303(d), TMDLs shall be incorporated into state water quality management plans, and under the implementing regulations at 40 CFR 130.6, water quality management plans shall include implementation measures. Moreover, the Clean Water Act at Sec. 303(e) requires the state's planning process to include TMDLs and "adequate implementation...for revised or new water quality standards." Thus, recent EPA policy (1997) emphasizes that EPA expects states to develop plans for implementing load allocations for nonpoint sources. The policy states that EPA expects state implementation plans to include reasonable assurances that the nonpoint source load allocations established in the TMDL will in fact be achieved. While the current EPA regulations do not include an implementation plan as a required element of the TMDL, EPA notes in the Garcia TMDL that we support the implementation and monitoring strategies developed by the State in the Strategy. In addition, EPA intends to continue to review the implementation and monitoring measures identified in the State's Strategy and to play an active role in assessing whether the measures will reasonably assure that the load allocations are met.

<u>Supplemental Response to the State's Draft Responses to Comments Received at the January 22, 1998 Public Hearing on the Proposed Garcia River Watershed Water Quality Attainment Strategy for Sediment dated December 9, 1997.</u>

6. Comment: The Regional Water Board must figure out how much loading the river can receive.

Commentor: Wayne Whitlock Pillsbury, Madison and Sutro

State's Response:

Regional Water Board reviewed all of the existing, available data for the Garcia River watershed in an attempt to calculate a loading appropriate for the Garcia River watershed. The data submitted for review, however, were only sufficient to develop a preliminary sediment budget which identifies mass wasting, fluvial erosion, and surface erosion inputs as well as outputs. The preliminary sediment demonstrates that land use activities deliver sediment to the watershed far in excess of natural processes. Until better data can be collected, then, the Strategy makes the conservative assumption that if all controllable sources of sediment are controlled, then sediment delivery will *approach* that of the natural erosional processes. A long timeframe (40 years) is proposed in which to conduct altered land management activities and mitigations

and evaluate the degree of instream recovery. Should hillslope activities provide the reductions necessary to restore water quality prior to completion of the actions proposed in the Strategy, it will be revised to reflect that fact.

EPA adds the following response:

The EPA TMDL provides a TMDL which represents the loading capacity of the Garcia River. The loading capacity is 552 tons/mi/yr.